



**Billing Code 4310 HH**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 7**

**[NPS-SLBE-10552; 6620-SZM]**

**RIN 1024-AE11**

**Special Regulations; Areas of the National Park System, Sleeping Bear Dunes National Lakeshore, Bicycling.**

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service proposes to designate the Sleeping Bear Heritage Trail currently under construction within Sleeping Bear Dunes National Lakeshore as a route for bicycle use. The approximately 27-mile-long trail will generally parallel major state highways and offer visitors safe, non-motorized access to the park. National Park Service general regulations require promulgation of a special regulation to designate routes for bicycle use outside developed areas or off park roads.

**DATES:** Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit your comments, identified by Regulation Identifier Number (RIN), by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail or Hand Deliver to: Superintendent's Office, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630.

**FOR FURTHER INFORMATION CONTACT:** Phil Akers, Chief Ranger, Sleeping Bear Dunes National Lakeshore, 231-326-5135, or at 9922 Front Street, Empire, Michigan 49630.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sleeping Bear Dunes National Lakeshore (SLBE or Lakeshore) was established in 1970 “for the benefit, inspiration, education, recreation, and enjoyment of the public.” (16 U.S.C. 460x). SLBE’s enabling legislation requires the National Park Service (NPS) to “administer and protect [the Lakeshore] in a manner which provides for recreational opportunities consistent with the maximum protection of the natural environment within the area.” (16 U.S.C. 460x). The 71,000-acre Lakeshore is located in the northwest portion of Michigan’s Lower Peninsula and encompasses a 35-mile stretch of Lake Michigan’s eastern coastline as well as North Manitou and South Manitou islands. The mainland portion is located within Benzie and Leelanau counties. The Manitou Islands, in Leelanau County, are located to the northwest in Lake Michigan, about seven miles from the shore. The nearest city is Traverse City, Michigan (population 15,000), located 30 miles east of the Lakeshore. Smaller communities such as Empire, Glen Arbor, and Frankfort are closer.

Named after a complex of coastal sand dunes, the Lakeshore features white sand beaches, steep bluffs reaching as high as 450 feet above Lake Michigan, thick maple and beech forests, and clear inland lakes. The Lakeshore’s most notable features - the ancient sand dunes - are products of wind, ice, and water action over thousands of years. The high, perched dunes afford spectacular views across Lake Michigan and of other glacially formed landscapes. The contrast

between the open, sunny environment of the dunes and the adjacent lush beech-maple forests is striking.

The Robert H. Manning Memorial Lighthouse, three former U.S. Life-Saving Service/Coast Guard stations, several coastal villages, and picturesque farmsteads reflect the Lakeshore's rich maritime, agricultural, and recreational history. The region surrounding the Lakeshore is a popular vacation and summer home destination. SLBE offers visitors recreational activities such as hiking, backpacking, kayaking, cross-country skiing, backcountry camping, hunting, fishing, and boating.

Over 1.1 million people visit the Lakeshore annually. SLBE's main visitor attractions include the Dune Climb (330,000+ visitors/year), Pierce Stocking Scenic Drive (430,000 visitors/year), and the Visitor Center (130,000+ visitors/year). Traffic and parking congestion are a concern at these locations. A multi-use trail connecting the main visitor destinations would help relieve these traffic concerns while simultaneously enhancing visitor access to a variety of recreational activities.

### **History of Bicycle Use**

Currently, bicycling within SLBE is allowed only on a lane shared with motor vehicles on Pierce Stocking Scenic Drive and on the road shoulders of state highways (M-22 and M-109) and county roads that run through the Lakeshore.

### **The Sleeping Bear Heritage Trail**

The Sleeping Bear Heritage Trail (SBHT) will be a hard-surfaced, approximately 27-mile-long trail from the southern Leelanau County line at Manning Road to County Road 651 at Good Harbor Beach. The trail will be separated from the roadway wherever possible, providing a safe, non-motorized route connecting the Lakeshore's main visitor destinations with neighboring

communities in Glen Arbor and Empire. Construction of the first segment of the trail was completed in June 2012, with the remainder to be constructed over a period of approximately 10 years. The route will generally parallel state highways M-22 and M-109, but will occasionally depart from these rights-of-way to take advantage of other existing corridors, such as old logging trails and a narrow gauge railbed. By using other disturbed areas whenever feasible, the location of the SBHT will minimize disturbance to Lakeshore resources. The SBHT will be located entirely on public lands within the Lakeshore.

Moving bicycle traffic off roads used by motor vehicles will reduce safety hazards and enhance opportunities for non-motorized enjoyment of the Lakeshore. It will also encourage the use of alternate means of transportation by park employees and park visitors to access these extremely popular areas. The SBHT will give bicyclists, walkers, runners, wheelchair users, rollerbladers, and cross-country skiers a safe, enjoyable, and healthy way to access and explore the Lakeshore.

Maps depicting the planned trail route including the completed first segment are available for review in the office of the Superintendent and on the Lakeshore's website at <http://www.nps.gov/slbe/parkmgmt/planning.htm>.

### **Trail Planning and Environmental Analyses**

The idea for a multi-use trail came from the Leelanau Scenic Heritage Route Committee (LSHR), which was created by the State of Michigan to preserve the historical integrity and safety of state highways M-22, M-109, and M-204. The LSHR is a broad partnership with representatives from 12 municipalities, the Lakeshore, the Michigan Department of Transportation, the Grand Traverse Band of Ottawa and Chippewa Indians, the Leelanau

Conservancy, the Leelanau County Road Commission, the Leelanau County Planning Commission, chambers of commerce, interested organizations, and citizens.

Planning for the trail began in 2005 when the LSHR suggested the concept to the NPS. In 2006, the LSHR created a Trailway Work Group to develop a multi-use trail along the M-22 and M-109 corridor in the Lakeshore. The Work Group included representatives of SLBE, the Michigan Department of Transportation, local townships and villages, and other interested groups and citizens. Through the LSHR, the public had many opportunities for involvement in planning the SBHT. The public provided input and review at various meetings and activities, including over 25 LSHR Committee meetings and 15 Trailway Work Group meetings from 2005 to 2008, and Port Oneida Days at the Lakeshore in August 2006 and 2007. In 2006 the LSHR staff also made introductory presentations to local governments, with follow-up presentations made in 2008.

The multi-use trail concept, including bicycle use, and the trail route were considered in the preferred alternative of SLBE's October 2008 Final General Management Plan/Wilderness Study/Environmental Impact Statement (GMP/EIS) and Record of Decision (ROD) signed by the NPS SLBE Superintendent and NPS Mid-West Regional Director in January 2009. In March 2009, SLBE published the Leelanau Scenic Heritage Route Trailway Plan and Environmental Assessment (EA) which evaluated the environmental impacts of a no-action alternative and two action alternatives, including one identified as the preferred alternative.

The Leelanau Scenic Heritage Trailway route was named the Sleeping Bear Heritage Trail, and in August 2009, the NPS SLBE Superintendent and NPS Mid-West Regional Director signed a Finding of No Significant Impact (FONSI). The FONSI identified the preferred alternative as the selected action and concluded that the construction of the multi-use trail, which

would include bicycle use, would not have a significant effect on the human environment. The GMP/EIS, ROD, EA, FONSI, and related documents may be viewed on the Lakeshore's planning website at <http://www.nps.gov/slbe/parkmgmt/planning.htm>.

### **Proposed Rule**

The SBHT will generally be constructed in M-22/M-109 and county road rights-of-way, and primarily within developed area zones as described in the Lakeshore's GMP. However, the trail route will occasionally deviate from the highway corridor and outside of developed areas as previously described in this rule, to provide access to natural, cultural, and recreation resources, and to promote a broader variety of experiences for the trailway user. Therefore SLBE is pursuing promulgation of a special regulation for bicycle use, as required by 36 CFR 4.30.

Accordingly, the proposed rule would add a new paragraph to 36 CFR 7.80, designating the proposed 27-mile-long SBHT as a route for bicycle use. The proposed rule also grants the Superintendent the authority to impose closures or restrictions upon bicycle use on designated trails after taking into consideration public health and safety, resource protection, and other management activities and objectives, provided public notice is given under 36 CFR 1.7.

The NPS now seeks comments on its proposal to designate this as a route for bicycle use. The construction of the SBHT as a multi-use trail, as stated above, was a separate decision and is not at issue in this proposal.

### **Compliance with Other Laws and Executive Orders**

#### **Regulatory Planning and Review (Executive Orders 12866 and 13563).**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

**Regulatory Flexibility Act (RFA).**

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the report entitled “Cost-Benefit and Regulatory Flexibility Analyses Leelanau Scenic Heritage Route Trailway, Sleeping Bear Dunes National Lakeshore” (NPS Environmental Quality Division - May 2012), available for review at <http://www.nps.gov/slbe/parkmgmt/planning.htm>.

**Small Business Regulatory Enforcement Fairness Act (SBREFA).**

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based

enterprises. The rule would not require fees, or involve other measures that would increase costs to visitors or, businesses. Rather, this rule would reasonably increase Lakeshore visitation and thereby generate benefits for businesses through increased visitor spending.

**Unfunded Mandates Reform Act (UMRA).**

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (Executive Order 12630).**

Under the criteria in section 2 of Executive Order 12630, this rule does not have significant takings implications. The rule will not deny any property owner beneficial uses, or reduced the value, of their land. No taking of property will occur as a result of this rule. A takings implication assessment is not required.

**Federalism (Executive Order 13132).**

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of NPS administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

**Civil Justice Reform (Executive Order 12988).**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:



(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**Consultation with Indian tribes (Executive Order 13175 and Department Policy).**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Representatives of the five Indian tribes affiliated with SLBE were consulted during the evaluation of the trail concept and route in the preparation of the GMP/EIS. Representatives of the nearest affiliated tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, are members of the LSHR that proposed the trail and helped to prepare the EA.

**Paperwork Reduction Act (PRA).**

This rule does not contain information collection requirements, and a submission under the PRA is not required.

**National Environmental Policy Act (NEPA).**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because we reached a FONSI. The GMP/EIS, EA, FONSI, and related documents may be viewed on the Lakeshore's planning website <http://www.nps.gov/slbe/parkmgmt/planning.htm>.

### **Effects on the Energy Supply (Executive Order 13211).**

This rule is not a significant energy action under the definition in Executive Order 13211.

A statement of Energy Effects is not required.

### **Clarity of this regulation.**

We are required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "**ADDRESSES**" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Drafting Information:** The primary authors of this regulation were Tom Ulrich, Deputy Superintendent, Sleeping Bear Dunes National Lakeshore, Michael Tiernan, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., A.J. North, Jay P. Calhoun, and Rose Wilkinson, NPS Regulations and Special Park Uses, Washington, D.C.

## **Public Participation**

It is the policy of NPS, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested parties may submit written comments, suggestions, or objections regarding this proposed rule to the addresses noted at the beginning of this rule.

## **Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **List of Subjects in 36 CFR Part 7**

National Parks, Reporting and recordkeeping requirements

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 7 as set forth below:

## **PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

1. The authority for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501-511, D.C. Code 10-137 (2001) and D.C. Code 50-2201 (2001).

2. In § 7.80 add paragraph (c) to read as follows:

**§ 7.80 Sleeping Bear Dunes National Lakeshore.**

\* \* \* \* \*

(c) *Bicycling*. (1) The Sleeping Bear Heritage Trail, approximately 27 miles in length from the southern Leelanau County line at Manning Road to County Road 651 at Good Harbor Beach, is designated as a route for bicycle use.

(2) The Superintendent may open or close designated routes, or portions thereof, or impose conditions or restrictions for bicycle use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

(i) The Superintendent will provide public notice of all such actions through one or more of the methods listed in § 1.7 of this chapter.

(ii) Violating a closure, condition, or restriction is prohibited.

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Rachel Jacobson  
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 2012-25138 Filed 10/12/2012 at 8:45 am; Publication Date: 10/15/2012]